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TESTIMONY ON HB429 - POSITION: FAVORABLE

Public Safety – Law Enforcement Agencies – Body–Worn Cameras

TO: Chair Clippinger, Vice Chair Moon, and members of the Judiciary Committee

FROM: Joanna Silver, on behalf of the Silver Spring Justice Coalition (SSJC)

My name is Joanna Silver. I am a resident of Silver Spring, in District 18. I am submitting this testimony on behalf of the Silver Spring Justice Coalition in support of HB429 Public Safety – Law Enforcement Agencies – Body–Worn Cameras. The Silver Spring Justice Coalition (SSJC) is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County. We envision a state and county where community and individual needs for safety are met while harm by police is eliminated.

On January 8, 2021, officers from a plainclothes unit of the Gaithersburg City Police Department shot and killed Kwamena Ocran. Because they were not in uniform, the officers who killed Kwamena were not wearing body-worn cameras. A grand jury, without the benefit of any body-worn camera recordings, did not criminally charge the officers. Melody Cooper, the mother of Kwamena Ocran, reached out to the Silver Spring Justice Coalition to find out what she could do to make sure that throughout Maryland, officers like the ones who killed her son would be required to wear body-worn cameras moving forward.

The Office of the Attorney General advised us that last year's body-worn camera law, SB71, does not clearly apply to plainclothes officers and clearly does not apply to municipal officers. We also have learned that many police departments allow their off-duty officers to work secondary security employment in their police uniforms, using all of their department-issued equipment, but SB71 did not require these officers to use body-worn cameras either. **HB429, or Kwamena's Law, seeks to fill the gaps left in SB71 by clarifying that body-worn camera use applies to the following category of officers:**

- 1) Municipal Police Officers: There are 88 municipalities in Maryland with their own police departments. Almost half of these municipalities already have their own body-worn camera programs.
- 2) Non-Uniform Police Officers: These officers range from specialized plainclothes investigation units to non-uniformed detectives.* All of these officers carry guns, interact with members of the public as police officers, and have the same rights and responsibilities as uniformed police officers. **HB429 would not apply to undercover officers whose supervisors determine that a body-worn camera would jeopardize their safety.**
- 3) Off-duty Police Officers in Uniformed Secondary Employment: Many police departments allow their officers to work part-time for private employers, using their department-issued uniforms and equipment, and these officers are vested with the same authority to exercise their police powers as when they are on-duty.

The Maryland General Assembly has already embraced the widespread use of body-worn cameras. This position was responsive to calls for an expanded body-worn camera program by the police and the community, and consistent with the expansion of such programs around the country. With the passage of SB71, Maryland became the seventh state with a body-worn camera requirement.¹ According to a 2016 Cato Institute report, 89% of Americans support the use of body-worn cameras and that this support does not vary based on the person's views of police.² A 2018 study by the Police Executive Research Forum found that 85% of police agencies that have adopted body-worn camera programs would recommend implementation to other agencies, with 65.9% "strongly" recommending them.³

When Montgomery County participated in a pilot program for body-worn cameras in 2016, the results were extremely positive. 99% of officers equipped with body-worn cameras said the ability to review footage in the field was valuable, 88% stated that the quality of evidence collected was improved, and 79% said that the quantity of evidence was increased.⁴ 98% of officers stated that body-worn cameras were valuable for self-critique, 89% noted that

¹<https://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx>

²<https://www.cato.org/policing-in-america/chapter-4/police-body-cameras>

³<https://www.policeforum.org/assets/BWCCostBenefit.pdf>

⁴<https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/mcpd-bwcs-pilot-program-summary-report.pdf>

citizens tended to be more cooperative, and 95% said that community members had a positive perception of the program.⁵ While perceptions are clearly important, there have also been multiple studies demonstrating a reduction in use of force incidents and misconduct complaints when officers use body-worn cameras.⁶

Against this background, there are good reasons to fill in the gaps left in last year's legislation. **First, while there are various categories of non-uniformed officers, those working in specialized plainclothes units in particular, have higher rates of excessive force and misconduct than uniformed officers.** In 2020 the Baltimore City Police Department eliminated most of their plainclothes officer units.⁷ The Baltimore Sun reported that these officers were long associated with the largest number of complaints and misconduct, noting that the notorious Gun Trace Task Force and others charged in the fallout of the GTTF scandal operated in the plainclothes units of the department for years.⁸ In 2018, a study of New York City plainclothes officers showed they were involved in 7 times more killings than uniformed officers,⁹ and in 2020, New York City disbanded their plainclothes units, concluding that they reflected an “outdated policing model that too often seemed to pit officers against the communities they served, and that they were involved in a disproportionate number of civilian complaints and fatal shootings by the police.”¹⁰

A Maryland Public Information Act request, submitted following the passage of Anton's Law, revealed that two of the police officers who killed Kwamena Ocran were disciplined for engaging in abusive conduct during a traffic stop conducted while they were on another plainclothes operation. Not only did the officers hold four young Black men, who were found to have done nothing wrong, on the side of the road for over four hours while screaming profanities at them, but the officers failed to complete the required paperwork to document that they had pointed their guns at the men.

Of additional concern with non-uniformed officers is that they are not immediately identifiable as police officers to other civilians. We are all too familiar with the critical role that

⁵Id.

⁶<https://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx>

⁷<https://www.baltimoresun.com/news/crime/bs-md-ci-cr-police-plainclothes-ordered-into-uniform-20200918-7wj5nyxqefcv3cciompireneeq-story.html>

⁸Id.

⁹<https://www.criminallegalnews.org/news/2018/sep/19/plainclothes-officers-6-percent-nyc-police-force-involved-31-percent-fatal-police-shootings/>

¹⁰<https://www.nytimes.com/2020/06/15/nyregion/nypd-plainclothes-cops.html>

cell-phone camera footage has played in shedding light on instances of police violence that we would never have otherwise known about. George Floyd is the most infamous example, but right here in Maryland, the Prince George's County Police Officer who murdered William Green might still be on the streets and working as a police officer were it not for the cell-phone footage that a witness bravely thought to take and turn over to Mr. Green's family because Officer Owen was not wearing a body-worn camera at the time that he killed Mr. Green.

The application of HB429 to non-uniformed officers is not intended to apply to undercover police officers, and Delegate Lopez will be moving to amend the bill to clarify that, "A law enforcement officer working in an undercover capacity shall not be required to use a body-worn camera if a supervising officer determines that such use would jeopardize the safety of the law enforcement officer." A review of local policies reveals that all undercover operations must be approved by a supervising officer, so the requirement of a supervisor authorizing no body-worn camera for undercover officers will not be burdensome.

Moreover, the use of body-worn cameras by non-uniformed officers does not run afoul of Maryland's wiretap statute. While Title 10 of Maryland's Courts and Judicial Proceedings Code requires both parties to consent to an oral recording, it contains a number of exceptions for law enforcement including an exception for the use of body-worn cameras when a "law enforcement officer is in uniform *or is otherwise prominently displaying the officer's badge or other insignia.*"¹¹ Thus, the wiretap statute contemplates the use of body-worn cameras by officers who are not in uniform and tells those officers what they need to do to comply with the law. In addition, Maryland Police Training & Standards Commission policies instruct officers to ensure that they are complying with the wiretap law when recording, including advising the subject that they are being recorded.

Uniformed secondary employment presents the exact same need for body-worn camera use as uniformed on-duty employment. Pursuant to policies of a number of county and local police departments, off-duty officers are entitled to earn additional income working in their department-issued uniforms, using their department-issued equipment, with the same power to engage in law enforcement actions as they have while on-duty.¹² Secondary employment may place a uniformed officer on a college campus, at a private business, at a place of worship, or working for another police department. In all of these cases, the benefits that body-worn cameras bring to the officers and to the community apply.

¹¹MD Cts & Jud Pro Code § 10-402 (2015).

¹²See, e.g., Montgomery County Regulations of Secondary Employment (Police)

<https://www.montgomerycountymd.gov/ethics/resources/Files/pdfs/comcor19a0601oeregpolice.pdf>

Just as some, but not all, Maryland counties already had body-worn camera policies prior to the passage of SB71, almost half of Maryland’s 88 municipal police departments already have some sort of body-worn camera program. The extension of a state-wide body-worn camera requirement to municipalities is also before this Committee in HB591, a bill that SSJC also supports. **In Montgomery County, the municipalities of Gaithersburg and Rockville both have body-worn camera policies and both policies include plainclothes officers and off-duty officers working secondary employment.**^{13,14} In fact, the Gaithersburg City Police Department voluntarily modified its policy in response to Kwamena Ocran’s killing, realizing that the community and the police department would have benefited from having body-worn camera footage in that case.¹⁵

This Committee should follow the lead of the City of Gaithersburg in recognizing that the gaps left in SB71 need to be filled to protect the police and the public. While there is no doubt that all jurisdictions, including municipalities, will object to additional body-worn camera requirements without funding attached, SB71 did not provide funding, and there is no reason why HB429 should be treated any differently. There is ample money in this year’s state budget for the Governor to provide funding, and he has already indicated that he intends to increase funding for police. SSJC is also aware of HB162, which would place the control and financial responsibility for Maryland’s body-worn camera program with the Maryland Department of Public Safety and Correctional Services; we have no objection to that proposal.

Just as Kwamena’s Law incorporates the same funding framework as SB71, it also incorporates SB71’s privacy protections. SB71 requires law enforcement agencies to adopt policies governing the use of body worn cameras consistent with the policy published by the Maryland Police Training and Standards Commission. The law requires the MPTSC to issue policies covering a wide range of subjects that protect privacy rights including when recording is mandatory, prohibited, or discretionary; when recording may require consent of a subject being recorded; when an officer must provide notice of recording; access to and confidentiality of recordings; the secure storage of data from a body-worn camera; review and use of recordings; dissemination and release of recordings; notification requirements when another individual becomes a party to the communication following the initial notification; *specific protections for individuals when there is an expectation of privacy in private or public*

¹³https://apps.gaithersburgmd.gov/general_orders/619_4_Body_Worn_Cameras.pdf

¹⁴<https://www.rockvillemd.gov/DocumentCenter/View/19826/4-55-Body-Worn-Camera-Systems?bidId=>

¹⁵<https://wjla.com/news/local/policy-change-implemented-after-man-was-shot-and-killed-by-plain-clothes-officers>

places; and any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers. These types of protections are common in body-worn camera legislation and are documented in the Brennan Center for Justice's resource guide summarizing such policies and providing guidance to assist jurisdictions in addressing privacy concerns.¹⁶

Plainclothes officers in particular are *less* likely to unjustifiably invade a person's privacy because they less often interact with civilians in private spaces than uniformed police officers; the nature of their assignments place them in public spaces and they are not typically the officers responding at people's homes through dispatched calls. However, **if there are particular privacy concerns that arise through the use of body-worn cameras by these officers, or by officers working secondary, uniformed employment, the MPTSC would have to address these concerns, as part of their mandate under the law.**

No parent should have to endure what Melody Cooper has: knowing that her son was killed at the hands of police officers, knowing that the police narrative of how he died is a lie, but being unable to rely on any objective evidence to prove them wrong,¹⁷ obtain justice for her son, and closure for her, her family, and the community. **HB429 will simply fill in the gaps in last year's legislation so that moving forward all of Maryland's community members and police officers can benefit from the use of body-worn cameras. The Silver Spring Justice Coalition urges a favorable report.**

¹⁶<https://www.brennancenter.org/our-work/research-reports/police-body-camera-policies-privacy-and-first-amendment-protections>

¹⁷Forensic evidence, the only objective evidence that does exist in Kwamena's case, raised serious questions about the officers' claim that Kwamena fired a gun at them; while investigators found 23 shell casings at the scene, they found none that came from Kwamena's gun, despite use of a metal detector.

https://www.washingtonpost.com/local/public-safety/gaithersburg-officers-not-charged-ocran-shooting/2021/10/08/00c2b8f8-282f-11ec-8d53-67cfb452aa60_story.html